

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:09CR257
)	
v.)	
)	
LORENZO LOYA-ESCOBEDO,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter is before the Court on defendant Lorenzo Loya-Escobedo's Motion for Reduction of Sentence (Filing No. [26](#)). Defendant pled guilty to violating 8 U.S.C. § 1326(a) and (b)(2), by reentering the United States after being removed subsequent to a conviction for the commission of an aggravated felony, and was sentenced to a term of imprisonment of thirty-seven months on November 6, 2009 (Judgment, Filing No. [24](#), at 1, 2). Defendant now moves the Court, *pro se*, pursuant to 18 U.S.C. § 3582(c)(2) for a reduction of his sentence in light of new sentencing rules that became effective on November 1, 2010, under Amendments 739 and 740. See U.S. Sentencing Guidelines Manual supp. to app. C (2010).

Defendant's motion for reduction of sentence will be denied. Under 18 U.S.C. § 3582(c)(2), the Court may reduce a term of imprisonment "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The Sentencing Commission's applicable policy

statement is found at U.S. Sentencing Guidelines Manual § 1B1.10 (2010). Under Section 1B1.10, “[a] reduction in the defendant’s term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if – (A) none of the amendments listed in subsection (c) [of this section] is applicable to the defendant.” U.S. Sentencing Guidelines Manual § 1B1.10(a)(2)(A). Subsection (c) of section 1B1.10 does not list Amendments 739 and 740 as amendments covered by this policy statement. See *id.* § 1B1.10(c) (listing amendments). Because “none of the amendments listed in subsection (c)” apply to defendant, a retroactive reduction of defendant’s sentence pursuant to 18 U.S.C. § 3582(c)(2) is “not authorized” under § 3582(c)(2). *Id.* § 1B1.10(a)(2)(A); *cf.* *Edwards v. United States*, No. 99-3056, 2000 WL 949179, at *1 (8th Cir. July 11, 2000) (per curiam) (affirming the district court’s denial of a motion to reduce sentence because the applicable amendment was not listed in § 1B1.10(c) and, therefore, could not be applied retroactively). A separate order will be entered in accordance with this memorandum opinion.

DATED this 16th day of November, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court